

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NOS. 96-318-C & 97-239-C - ORDER NO. 2000-0518  
JUNE 21, 2000

IN RE: <b>Docket No. 96-318-C</b> – Establishment of	)	ORDER RULING
Fund to Address Revenue Impact of	)	ON MOTIONS
Incumbent Local Exchange Carriers Electing	)	
to Reduce Toll Switched Assess Rates.	)	
	)	
AND	)	
	)	
<b>Docket No. 97-239-C</b> – Proceeding to	)	
Establish of a Universal Service Fund.	)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on various motions filed by the Consumer Advocate for the State of South Carolina (the Consumer Advocate) and the South Carolina Telephone Association (SCTA), and on one motion filed by Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless).

The Consumer Advocate first moves that this Commission direct the Commission Staff to initiate a proceeding on remand in response to the South Carolina Supreme Court Order reversing and remanding the Interim LEC Fund (the Fund) back to this Commission. The Consumer Advocate also moves to continue the merits hearing on implementation of the Universal Service Fund (USF). Because of the reasoning stated below, we grant the motion to initiate the proceeding with regard to the Fund, but we deny the continuance of the USF merits hearing.

With regard to the interim LEC Fund matter, we would note that on January 24, 2000, the South Carolina Supreme Court issued an opinion which found that this Commission did not provide appropriate notice of local service rate increases to customers of twenty-one (21) local exchange companies as part of the Commission's establishment of the Interim LEC Fund. This Commission had established the Fund in its Order No. 96-882, dated December 30, 1996 in response to the requirements set forth in S.C. Code Ann. Section 58-9-280 (M) (Supp. 1999).

The Consumer Advocate notes that, as the result of the Court's ruling, this Commission must, after adequate notice to the affected customers, hold hearings for each local exchange carrier which was subject to the appeal, re-evaluate the total five-year rate increases granted in Order No. 96-882, and adjust future annual scheduled rate increases if necessary. The Consumer Advocate requests that this Commission institute these proceedings as soon as possible.

The Consumer Advocate also states its belief that the Commission should continue the merits hearing on USF, since he alleges that the dollar amount of USF will be directly affected by the determination of appropriate local rates in the Interim LEC Fund proceedings on remand. Therefore, the Consumer Advocate believes that we should continue the USF proceeding until such time as the remand proceedings are completed on the Interim LEC Fund. We have received documents from many of the parties in this case concurring in this motion, while some few parties have opposed at least the continuance of the USF merits hearing.

We grant the motion to initiate the proceeding regarding the Interim LEC Fund, since the South Carolina Supreme Court has ordered us to take the actions outlined by the Consumer Advocate in any event. However, we do not think that it is necessary to continue the USF hearing, and deny this portion of said motion. We believe that we have delayed consideration of the USF long enough, especially consideration of those issues which may not be directly related to the exact dollar amounts of that fund. Our Notice of Filing and Hearing of April 20, 2000 lists several issues in that category. These issues include, but are not limited to, the need for immediate implementation of the intrastate USF, the proposed funding mechanism for the intrastate USF, the proposed methods for implementing a phase-in of the intrastate USF, the impact on rural areas if the intrastate USF is not implemented in some form, and the determination as to which telecommunications carriers shall be required to contribute to the intrastate USF. These issues are not completely related to the size of the fund, and, thus, may be considered separate and apart from any issues related to the amount of the USF.

We do agree, however, with the Consumer Advocate when he states that the dollar amount for the USF will be directly affected by the determination of appropriate local rates in the Interim LEC Fund proceedings on remand, and that this is due to the requirement stated in S.C. Code Ann. Section 58-9-280 (E)(4). In short, if the formula described in that statute is to be used in the further determination of the USF, this Commission has to know what each Company's basic local exchange rate will be after the proceedings on remand of the Interim LEC fund. Again, we agree, and, accordingly, we do hold that this Commission will not issue a final Order on the merits portion of the

USF implementation until such time as the Interim LEC Fund proceedings are completed, and we have all the information that we need from those proceedings to proceed to finalize the USF case.

In addition, we also take administrative notice in the present case of the Order of the Honorable Joseph F. Anderson, Jr., United States District Judge of May 24, 2000 in the case of AT&T Communications of the Southern States, Inc., et.al v. BellSouth Telecommunications, Inc. and the Public Service Commission of South Carolina. In its reply to the Consumer Advocate's original motion to establish Interim LEC proceedings and continue the USF merits hearing, the attorney for the Southeastern Competitive Carrier's Association pointed out that this Commission must examine whether Judge Anderson's Order as it relates to the cost of Unbundled Network Elements (UNEs) affects the calculation of costs in this docket. One question that must be addressed is whether or not the precise costing model for UNEs, which was declared unlawful by Judge Anderson, was the same or similar to the costing model originally employed by this Commission to determine the size of the Universal Service Fund. In addition, other concerns about various issues related to the USF have been raised by various parties to this proceeding. These issues include, but are not limited to whether only intrastate revenues may be taxed to create the fund, whether wireless revenues may be taxed, and how the Commission can and should deal with the elimination of implicit subsidies. We hold that we will also not issue a final Order on USF until this Commission has addressed its responsibilities related to Judge Anderson's decision, and the other concerns that have been raised by the parties in this matter.

In addition, the Consumer Advocate moves this Commission for an Order which would strike all pre-filed testimony of witnesses for the South Carolina Telephone Association and GTE South, Inc. (GTE) in this case for alleged failure to comply with our Order No. 2000-0381, which set forth the deadlines for pre-filing testimony and exhibits in this case. Also, SCTA, on behalf of itself and its individual member companies, filed a motion for extension of time in which to file its testimony.

The Consumer Advocate notes that in letters addressed to the Commission's Executive Director dated June 5, 2000, SCTA and GTE state that, due to the pendency of the Consumer Advocate's motion to continue this hearing, the two parties would not serve parties of record with their pre-filed testimony until that motion was resolved by the Commission. (The two parties did file the testimony and exhibits on the appointed date with the Commission, however, in a "sealed" format.) Our Order No. 2000-0381, dated May 1, 2000 in this case set forth a June 5, 2000 deadline for the filing and serving of testimony. The Consumer Advocate would assert that by failing to serve the parties of record in a timely manner, SCTA and GTE have violated Order No. 2000-0381, and that the testimony of the two parties should be stricken.

In response, SCTA has filed, on behalf of itself and its individual member companies (including GTE)(collectively referred to hereinafter as SCTA), a motion for an extension of time in which to serve its testimony. SCTA requests that the time for service be extended until such time as the Commission rules on the motion for continuance filed by the Consumer Advocate. SCTA states that in the event that the Commission determines to proceed with the July 17<sup>th</sup> hearing, the SCTA and/or its

individual member companies would immediately serve all parties with the testimony that has been prefiled in this docket. In the alternative, SCTA requests waiver of the application of Regulation 103-869( C) in the present situation, which requires the serving of testimony on the other parties as imposing an unusual hardship upon the SCTA and the other member companies, when this Commission has not ruled on the Consumer Advocate's motion for continuance. SCTA believes that all of the parties should not be privy to its testimony and exhibits if a continuance is to be granted in the proceeding.

We deny the Consumer Advocate's Motion to Strike, and grant SCTA's motion to extend the time in which to serve testimony. We believe that this Commission's mandate from the General Assembly to continue to work toward eventual implementation of the USF outweighs the propriety of the delay that would be caused if the Consumer Advocate's motion to strike SCTA and GTE testimony was granted. We have already determined that this proceeding should not be continued, but should move on. We therefore grant SCTA's motion to extend the service time. (We interpret that motion as also having been made by GTE, a member of the SCTA.)

However, so that no party will be prejudiced or deprived of ample time to review the materials by the delay resulting from not having SCTA and GTE testimony and exhibits served on them, we hold that the testimony and exhibits be hand-delivered to all parties to this proceeding by the close of business on **June 13, 2000**. Accordingly, the testimony and exhibits of the remaining parties shall be prefiled with the Commission and served on the other parties on or before **July 3, 2000**. All testimony in response to that of SCTA and GTE must be filed with the Commission and in the hands of the parties

by the close of business on **July 3, 2000**. This gives the responsive parties substantially the same amount of time to prefile and serve responsive testimony and exhibits as if they had been served on the original date set by this Commission. (Dates and conditions for the prefilings of rebuttal and surrebuttal testimony originally set out by Order No. 2000-0381 will remain in effect.)

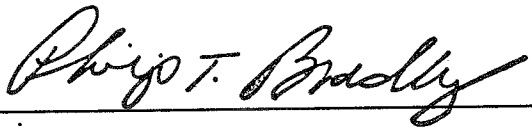
The remaining motion is a motion from Verizon Wireless for an Order defining issues for the USF hearing. More specifically, Verizon Wireless wants us to issue an Order clarifying if, and to what extent, the USF proceeding and hearing are intended to subsume the issue of wireless communications carrier participation in the State USF and imposition of the proposed surcharge therefor on wireless communications customers. We grant the motion, and hereby hold that the merits portion of the USF fund implementation proceeding is indeed the proper forum to address the issue of wireless carriers' participation in the support of the USF, as well as other issues previously noticed by this Commission. We would note that our April 20, 2000 Notice of Filing and Hearing specifically states that the Commission will receive information and testimony concerning the determination as to which telecommunications carriers shall be required to contribute to the intrastate Universal Service Fund. (See Issue No. 5 Notice of Filing and Hearing dated April 20, 2000.) Further, we would note that Verizon Wireless intervened in this matter after publication of this Notice. The present case is certainly the proper forum to address the issue of the participation of wireless carriers in the USF.

In summary, we grant the Consumer Advocate's motion to initiate a proceeding on remand to address the matter of the Interim LEC Fund, however, we deny the motion

for continuance of the USF proceeding. We deny the Consumer Advocate's motion to strike SCTA and GTE testimony, but grant the SCTA motion to extend the time for service of SCTA and GTE testimony. We also adjust the responsive prefiling date accordingly. Finally, we grant the motion of Verizon Wireless, and hold that the USF proceeding is the proper forum to address the issue of wireless carriers' participation in support of the USF.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)